

Law Office of G. Anthony Long
P. O. Box 504970, Second Floor Lim's Bldg.
San Jose, Saipan, MP 96950
Telephone No. (670) 235-4802
Facsimile No. (670) 235-4801

Attorney for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS**

UNITED STATES OF AMERICA)	CRIMINAL ACTION NO. 05-0023
)	
Plaintiff)	
)	DEFENDANT'S MEMORANDUM
v.)	SUPPORTING MOTION TO SEVER
)	TRIAL ON COUNT 3
JUAN QUITUGUA)	
)	Date: Oct. 6, 2005
Defendant)	Time: 9:00 a.m.
)	

**I. JOINING COUNT 3 IN THE SAME INDICTMENT WITH COUNTS 1 AND 2 IS
IMPROPER UNDER FRCrP RULE 8**

FRCrP Rule 8 provides that an indictment:

... may charge a defendant in separate counts with 2 or more offenses if the offenses charged--whether felonies or misdemeanors or both--are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.

The validity of the joinder of two or more counts is determined solely by the allegations in the indictment. *United States v. Terry*, 911 F.2d 272, 276 (9th Cir.1990) Reversal under Rule 8 is required where the misjoinder of counts results in actual prejudice because it 'had substantial and injurious effect or influence in determining the jury's verdict.' " *Id* at 277 quoting *United*

1 *States v. Lane*, 474 U.S. 438, 449, 106 S.Ct. 725, 732, 88 L.Ed.2d 814 (1986). *Terry*, like the
2 indictment in this case, joined drug charges with a charge for unlawful possession of a firearm.
3 The 9th circuit reversed finding the joinder was improper. *Id* at 277. *Terry*'s rationale applies in
4 this case which should result in severance of count 3 from counts 1 and 2.

5
6 **B. IF THE COURT FINDS JOINDER IS PROPER UNDER RULE 8, THEN TRIAL**
7 **ON COUNT 3 SHOULD BE SEVERED FROM THE TRIAL ON COUNTS 1 AND**
8 **2 PURSUANT TO FRCrP RULE 14**

9 FRCrP Rule 14 allows for severance if it appears that the joinder of offenses in an
10 indictment prejudices a defendant. Severance under Rule 14 is proper when a risk of undue
11 prejudice exists which impacts a specific right of a defendant such as the right to a fair trial.
12 *United States v. Lewis*, 787 F.2d 1318, 1322, amended, 798 F.2d 1250 (9th Cir.1986) In this
13 case, trying count 3 together with counts 1 and 2 will deprive Quitugua of a fair trial as the spill
14 over effect of the evidence relating to distribution of contraband in counts 1 and 2 will unduly
15 prejudice the jury with respect to the elements of count 3 and deny Quitugua a fair trial. *See Id.*

16
17
18 **CONCLUSION**

19 Rules 8 and Rule 14 each require severance of the trial on count 3 from the trial on counts
20 1 and 2.
21

22
23 Law Office of G. Anthony Long

24 By: 
25 G. Anthony Long